

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PROSHIPLINE, INC., EP-TEAM, INC.,

Plaintiffs,

v.

ASPEN INFRASTRUCTURES, LTD., f/k/a
SUZLON INFRASTRUCTURE, LTD.,

Defendants.

MASTERS AND PURSERS OF THE M/S
MARGARETHA GREEN, *et al.*

Garnishees.

Case No. C07-5660FDB

ORDER SETTING BRIEFING
SCHEDULE and HEARING

Defendant Aspen Infrastructures moves for a hearing to determine the propriety of the Bond that Defendant has filed with the Court in this matter as security for assets garnished in this matter under Supplemental Admiralty Rule B. Defendant Aspen asserts that Plaintiffs have made an unreasonable objection to a portion of the language of the Bond, which language is required by the surety.

Plaintiffs object to the form of the bond filed by Aspen asserting that it provides insufficient security for Plaintiffs' claims. Specifically, the Bond [Dkt. # 17] recites that Aspen and the Surety

1 will be bound while the garnishment is in effect as to any asserted claims in arbitration in the sum of
2 \$532,539.00, [Dkt. # 17 ll. 9 – 16.] In the next paragraph, however, Plaintiffs object to the
3 following language conditioning any obligation created by the bond on satisfaction of the award by
4 the Principal (Defendant Aspen):

5 The condition of this obligation is that if either Plaintiff shall obtain a final and
6 enforceable monetary arbitration award as to the subject matter of the above-
7 captioned Complaint, then the Principal shall satisfy such award, after any and all
8 appeals resulting therefrom If the Principal fails to satisfy any such final award,
9 then the Surety will satisfy such award, and then this obligation would become null
10 and void. However, this obligation shall cease if the above-referenced garnishment is
11 set aside or withdrawn.

12 (Bond Agreement, p. 2, ll 17 – 23, p. 3, ll 1– 2.) The above underscored language from the Bond
13 Agreement is troublesome to Plaintiffs because Defendant Aspen has revealed in Singapore that it
14 reserves the right to challenge jurisdiction as to Plaintiffs' claims in arbitration. (Decl. of Plaintiffs'
15 Counsel Steven Gibbons Regarding Insufficiency of Bond, ¶ 6) Plaintiffs' counsel asserts that
16 ordinarily maritime release bonds do not condition the obligation of the surety on failure by the
17 Principal to satisfy an award or judgment; rather, they provide that both the surety and the principal,
18 as makers of the bond, remain bound to satisfy any award or judgment of a court of competent
19 jurisdiction. Plaintiffs argue that the security must bind both the Principal (Aspen) and the Surety
20 should, for example, the Principal be placed in receivership or seek protection from bankruptcy laws,
21 and to eliminate arguments over whether the Principal has satisfied the judgment or has had an
22 opportunity to satisfy the judgment. Moreover, Plaintiffs argue that an appropriate bond must
23 provide security as respects either an arbitration award or a judgment by a court of competent
24 jurisdiction in order to avoid the possible frustration of this Court's present jurisdiction, obtained by
25 the Rule B process, both over the *res* and over Defendant Aspen to the extent of the value of the
26 garnished property. Plaintiffs then submit a form of bond [Ex. C to Gibbons' Decl.] that is agreeable
to it and which it argues is consistent with the form of bonds typically approved in connection with
the release of maritime property.

1 NOW, THEREFORE, IT IS ORDERED: The parties shall brief (1) the issue of whether an
2 appropriate bond should provide security with respect to either an arbitration award or a judgment
3 by a court of competent jurisdiction; (2) the issue of whether the bond should be conditioned on the
4 failure of the Principal to satisfy an award or judgment, or whether the bond should provide simply
5 that both the surety and the principal, as makers of the bond, remain bound to satisfy any award or
6 judgment of a court of competent jurisdiction; and (3) any other issue, fact, or law that is important
7 to a full understanding of the circumstances and practice in this area that will allow the Court to be
8 fully informed in order to resolve this issue as to sufficient bond.

9 On Monday, December 10, 2007, the Parties briefs addressing the above issues are due no
10 later than 9:00 a.m., and a hearing is scheduled for 2:00 p.m. the same day.

11 DATED this 6th day of December, 2007.

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14 FRANKLIN D. BURGESS
15 UNITED STATES DISTRICT JUDGE
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